

# CCR Baltic Regulatory Authorities statement of disagreement on the CCR Baltic TSO's proposal on Capacity calculation methodology according to Commission Regulation (EU) 2016/1719 (FCA GL)

## General background on the proposal and its application in CCR Baltic

The capacity calculation methodology according to FCA GL is generally used for calculation of forward capacities to be allocated via long-term transmission rights (LTTRs). Since LTTRs are only allocated for the Estonian and Latvian bidding zone border EE-LV and not for other borders in CCR Baltic, the primary application of the methodology is currently to provide market participants with a forecast on future capacities to be available for the market.

The proposal by the TSOs is a methodology that builds upon the coordinated net transfer capacity approach used for DA capacity calculation.

## General background on the process

- TSOs' proposal was received by the last NRA of CCR Baltic on the 17<sup>th</sup> of July 2019
- The last NRA of CCR Baltic sent a request for amendment to the TSOs on the 17<sup>th</sup> of January 2020.
- An amended proposal was received by the last NRA on the 18<sup>th</sup> of March 2020.
- NRAs discussions of the amended proposal have identified diverging views on the legal compliance of central parts of the proposal. These diverging views have blocked NRAs discussions on the proposal as a whole.

## Summary of NRAs diverging legal interpretations

In the amended proposal Article 7 section 1 and 2 the TSOs describe the long-term capacity calculation on the bidding zone border between Estonia and Latvia and the bidding zone border between Lithuania and Latvia. The estimation of the total transfer capacity values is not explained, instead the methodology refers to two separate documents, namely:

- Instruction for parallel operation in the Lithuania-Latvia Cross-Border Interconnection
- Instruction for parallel operation in the Cross-Border Interconnection between Estonian Russian and Latvian power systems

In the request for amendment sent by all NRAs of the Baltic CCR it was requested that these references should be removed and instead that relevant parts of the documents should be included in the methodology.

In the amended proposal the TSOs did not meet this request. They claim the content of these documents cannot be made public since the documents are confidential according to an agreement between the countries of Estonia, Latvia, Lithuania, Belarus and Russia. However, the TSO proposed that the NRAs could be authorized to read the documents before deciding on the proposed methodology.

The NRAs hold diverging opinions on if the amended methodology can be approved when it refers to the above-mentioned confidential documents without providing any additional information on the

estimation of total transfer capacity. A majority of the NRAs of the Baltic CCR underline that they agree with the other parts of the amended proposal.

The Swedish NRA Swedish Energy Markets Inspectorate (Ei) and the Finnish Energy Authority (EV) deem that the methodology cannot be approved when it includes these references to external documents affecting key parts of the methodology. The Estonian NRA Republic of Estonia Competition Authority (ECA), the Latvian NRA Public Utilities Commission (PUC), the Lithuanian NRA National Energy Regulatory Council (NERC) and the Polish NRA Urząd Regulacji Energetyki (URE) are of the opinion that the references do not prevent the methodology from being approved. Nevertheless, for URE the precondition for the approval would have been that the above-mentioned documents were provided to the Baltic CCR NRAs prior the approval so that it was possible to gain knowledge of their content in the relevant parts affecting the methodology and have them in proceeding case file as an evidence.

#### Ei's view

In Ei's opinion the references to the documents give rise to three main issues.

Firstly, without any information of how the estimation of total transfer capacity is carried out according to the referenced documents, the NRAs do not have sufficient information to approve the proposed methodology. An approval under the current circumstances would mean approving provisions unknown to the NRAs, which further means that legal compliance of the methodology is impossible for the NRAs to ensure.

Secondly, the primary application of the methodology is to provide market participants with a forecast on future capacities to be available for the market. In Ei's opinion it is therefore inappropriate to withhold potentially important information on how total transfer capacity is estimated. Furthermore, Ei does not consider this to be in line with one of the objectives of FCA GL, which is ensuring and enhancing the transparency and reliability of information on forward capacity allocation (FCA GL Art. 3.f).

Thirdly, amendments to the documents might lead to amendments of the proposed methodology by giving new meaning to the references. Amendments to the documents would not have to follow the procedures set out in FCA GL but instead could be the result of bilateral or multilateral agreements between Estonia, Latvia, Lithuania, Russia and Belarus. This means that the proposed methodology could be amended without transparency and without influence of several of the countries in the CCR.

Ei has considered the TSOs proposal that the NRAs can be authorized to access the confidential documents prior to deciding upon the methodology. However, Ei concludes that this does not solve the above-mentioned issues. Even if it would allow the NRAs to ensure the legal compliance of the proposed methodology at present, any future amendments to the confidential documents could potentially lead to the methodology becoming legally incompliant. Also, the methodology would still lack transparency towards market participants.

Ei acknowledges that this is a difficult issue given the current situation for the Baltic states. Since the Baltic states' grids are synchronized with the Russian and Belarusian grids it is necessary for these states to cooperate. Ei understands that it might be difficult for such a cooperation to be fully compatible with processes outlined in EU law. However, since this issue touches upon the relationship between EU law and bilateral agreements with third countries Ei finds it appropriate to

refer this decision to ACER, so that ACER can provide guidance for how the NRAs should manage similar issues going forward.

In the approved capacity calculation methodology for the Baltic CCR in accordance with Commission Regulation (EU) 2015/1222 (CACM GL) similar references are included. If necessary, Ei would like to see that methodology amended to be in line with the ACER's guidance for managing this issue.

#### EV's view

The Finnish NRA, EV, considers that in addition to the practical approach at how to calculate the capacities, the methodology has a role in providing information to market participants. The methodology should be transparent enough for the market participants to be able to understand how the capacities are derived. Regardless of the RfA, the Baltic CCR TSOs have not made the required changes, asking for the removal of references to external documents. The content of these external documents is unknown to EV, making it impossible to assess the methodology as a whole. The link to external documents in the methodology would also mean that EV would be legally approving a document, which could be changed over time in the future.

Considering the lack of transparency towards market participants and the fact that approving this methodology might lead to the methodology to be changed over time without the NRA's oversight due to the link to external documents, it is impossible for EV to approve the amended proposal.

EV considers it also necessary to reflect the outcome of ACER's upcoming assessment of the LT CCM proposal to the CACM CCM, and if required, making the required amendments to that methodology as well.

#### Baltic NRAs (NERC, PUC and ECA) common view

As the issue arises from the BRELL (Belarus, Russia, Estonia, Latvia, Lithuania) documentation it should be taken into account that in the Baltic case the capacity calculation principles are different than other EU countries practice due to reason that it is very much affected by the BRELL agreements. Therefore the Baltic NRAs and TSOs are not able to change BRELL documentation before moving from IPS/UPS system to the synchronous electricity grid of Continental Europe by 2025. Also it should be noted that BRELL agreements are confidential and making them to put the content in public methodology would depend not only on the Baltic NRAs and TSOs but also on the agreement with Belarus and Russia. Baltic states are currently not in a position to violate the rules of this agreement, taken into account that Baltic network developments for desynchronization are still ongoing and Baltic states readiness to desynchronize from BRELL network will be ready not before 2025.

Furthermore, when approving Baltic CCR in accordance with Commission Regulation (EU) 2015/1222 (CACM GL) Art 20(2), Baltic CCR NRAs already agreed that referral to BRELL documentation in methodology (points 6.4.1, 6.4.2, 8.1.2 and 8.2.1: specifically referred to Instruction for parallel operation in the cross-border interconnection (BRELL) and Methodical guidelines for stable operation in BRELL Power Loop) was acceptable.

Baltic NRAs are of a common opinion that the references to BRELL documentation do not prevent amended proposal from being approved. However after common discussion between Baltic NRAs the following compromise that would follow a three-step approach was offered: a) ask TSOs to send the BRELL documents to Baltic CCR NRAs, b) enclose the documents as annex to the Baltic LT CCM (but for public they will be confidential), and/or c) state in our common position paper/national decision that

the methodology should be amended after Baltics Synchronization project implementation (year 2025). In this way Baltic CCR NRAs are able to get acquainted with the content of the BRELL documents that affect the Baltic capacity calculation principles and would be on a better position to evaluate the methodology. Additionally, adding the documents as annexes to the methodology (even in case the content is confidential from the public) would give market participants and the public certainty that NRAs, as being aware of the content of these documents and principles, have evaluated the methodology with knowledge of all aspects that takes into account the common EU practices and FCA GL principles as well as Baltic current situation in BRELL network.

Please note that the similar issue arises on setting a 70% minimum availability target for interconnectors following from requirements of Regulation on the internal market for electricity (EU) 2019/943, where the Baltic NRAs already informed ACER about BRELL confidentiality restrictions and some different capacity calculation rules and currently these issues are being discussed with ACER and European Commission.